

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 1869 – HB 1935

March 20, 2018

SUMMARY OF ORIGINAL BILL: Authorizes an insurer to disregard an insured's assignment of benefits if such benefits are to an out-of-network facility-based physician and the following conditions are not met: the healthcare facility provides written notices to the insured, or the insured's personal representative, the insured signs the written notice acknowledging agreement to receive medical services by an out-of-network provider, and the written notice includes the standardized statement provided in the legislation.

Requires the written notice to be provided to an insured prior to first receiving services from an out-of-network facility-based physician, unless the medical services are provided by a hospital emergency department or the insured is incapacitated or unconscious at the time of receiving such services.

Establishes that the failure of a healthcare facility to provide such notice does not give rise to any right of indemnification or private cause of action against the healthcare facility by an out-of-network facility-based physician for an insurer's disregard of an insured's assignment of benefits, unless: the healthcare facility's failure to provide the written notice is due to willful or wanton misconduct of an agent of the healthcare facility and the out-of-network facility-based physician provides the insured a billing statement containing certain detailed information.

Prohibits healthcare providers from collecting out-of-network charges from the insured if the written notice has not been provided and signed by the insured. Establishes that the requirement to provide a written notice does not apply to accident-only specified disease, hospital indemnity, Medicare supplement, long-term care, or other limited benefit hospital insurance policies.

FISCAL IMPACT OF ORIGINAL BILL:

Other Fiscal Impact – Passage of this legislation may result in decreases in expenditures for the state plan, local education plans, and local government plans administered by the Division of Benefits Administration (DBA), to the extent out-of-network facility-based physicians fail to provide the written notice and follow other requirements established by this legislation. Due to multiple unknown factors, any such decrease in expenditures experienced by the DBA cannot be quantified with any reasonable certainty.

IMPACT TO COMMERCE OF ORIGINAL BILL:

Other Commerce Impact – Passage of this legislation may result in decreases in business revenue to out-of-network facility-based physicians to the extent such physicians fail to provide the written notice and follow other requirements established by this legislation. Any other impact to commerce or jobs in Tennessee is considered not significant.

SUMMARY OF AMENDMENT (015719): Deletes subdivision (d)(3) from Section 1 of the bill, thereby removing the prohibition against healthcare providers collecting out-of-network charges from the insured if the written notice has not been provided to and signed by the insured.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- This legislation will allow a health insurance company to deny an assignment of benefits to an out-of-network facility-based physician if certain notification requirements are not met.
- According to the Division of Benefits Administration, under current practice, the state plan, local education plan, and local government plans managed by the Division pay billed charges when an out-of-network healthcare provider renders service to a member at an in-network facility.
- The Division is unaware how often an out-of-network facility-based physician will fail to provide a notice to a member of either the state plan, local education plan, or local government plans; however, due to the fact that the Division currently pays for such services, it is assumed that healthcare providers will generally seek to provide the required notice.
- To the extent out-of-network facility-based physicians fail to provide the notice required in this legislation, the Division may experience a decrease in expenditures as a result of being able to deny a member's assignment of benefits; however, due to numerous unknown factors, an impact to the Division cannot be estimated with any reasonable certainty.
- According to the Bureau of TennCare, this legislation is estimated to have no significant impact on Medicaid plans administered through the Bureau.
- Amendment 015719 will effectively authorize a healthcare provider to balance bill an insured, regardless of whether the written notice was provided and signed by the insured. This will have no significant impact on plans administered by the Division or the Bureau, but rather will impact the expenses paid by insured members.

IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:

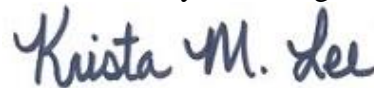
Other Commerce Impact – Passage of this legislation will result in no significant decrease in business revenue to out-of-network facility-based physicians. Any decrease in revenue experienced by such physicians resulting from an insured being prohibited to assign benefits to an insurer will be offset by the physician balance billing the insured an amount equal to the difference between the cost of the healthcare service and the amount the insurer is willing to pay. Any other impact to commerce or jobs in Tennessee is considered not significant.

Assumptions for the bill as amended:

- Amendment 015719 authorizes healthcare providers to balance bill an insured regardless of whether the written notice was provided to and signed by the insured.
- This legislation could result in a decrease in revenue to out-of-network facility-based physicians in this state to the extent physicians fail to adhere to the notification requirements created by this legislation, resulting in an insured being prohibited to assign benefits to the respective insurer; however, any decrease in revenue from payments made by an insurer on behalf of an insured will be offset by the healthcare providers balance billing the insured for the difference between the cost of the healthcare service and the amount the insurer is willing to pay.
- It is assumed that any impact upon such physicians will not cause a significant impact to commerce or jobs in this state.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

/jdb